

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 03/28/2016

TIME: 09:40:00 AM

DEPT: 42

JUDICIAL OFFICER PRESIDING: Henry Walsh

CLERK: Hellmi McIntyre

REPORTER/ERM:

CASE NO: **56-2013-00436494-CU-BT-VTA**

CASE TITLE: **Bustillos vs. Oxnard Automobile Exchange Inc**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Business Tort

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the motion for summary judgment/summary adjudication filed by Access Finance under submission, now rules as follows:

The motion is granted as to Issue No.1, the duty to defend. It is not disputed that the 2008 contract was signed by both sides. The contract contains an indemnity and defense clause in favor of moving party, AFI. There is nothing illegal about this clause. The duty to defend arose upon service of process on AFI, and their demand for a defense. Both of these events have occurred. The duty to defend is indivisible, and applies regardless of the ultimate liability that may or may not be imposed on the indemnitee. There were no personal guarantees as part of the 2008 contract. The court's resolution of this issue applies to RCD.

The motion is denied as to Issue No.: 2, RCD's duty to indemnify. The class, as defined by both the plaintiff and the moving party, includes cars that may have been purchased after December 2, 2013, the date of the purported dealer agreement. If RCD did not execute the 2013 agreement, which is the position that Mr. Grandinetti takes, then RCD is not obligated to indemnify AFI for liabilities arising from the sale of those post December 2, 2013 cars. At this point, we do not know how many of the estimated 1625 class members bought their cars after December 2, 2013. We also do not know how much of the \$600,000.00 settlement is attributable to those vehicles. At the risk of issuing an advisory opinion, the court believes that the indemnity clause is sufficiently narrow to avoid the active/passive negligence thicket of McDonald & Krause v. San Jose Steel, 29 Cal.App.3d 413.

The motion is denied as to Issue No.: 3, the obligation of Robert Grandinetti under a guaranty agreement. There is a triable issue of fact as to whether Mr. Grandinetti executed the 2013 Guaranty agreement. He says he did not. Mr. Shraga says that he did. This amounts to a triable issue of a very

material fact. It is not suitable for resolution on a motion for summary adjudication.

The motion is granted as to Issues 4, 5 and 6. These issues seek adjudication as to defendants Ritter, Lopez and Rodriguez. They have each been defaulted. This motion is the functional equivalent of a prove up.

The motion is granted as to Issue 7, that RCD is not entitled to indemnity from AFI. The court has granted a motion for good faith settlement in connection with the settlement AFI has reached with certain plaintiffs. As to those plaintiffs, the finding of good faith cuts off claims from RCD against AFI.

In reaching these rulings, the court further finds as follows: For issues 1- 6, IMP's 1, 2, 7, 9, 11-18 are undisputed. Not established are facts 3-6, 8, and 10. For issue 7, facts 12, 15, 19 and 21 are undisputed. Fact 20 is established. AFI's request for judicial notice 1- 9 are granted. Request No. 10 ("the records of the court ... ") is denied as vague. RCD's evidentiary objections 1, 2 (A) - (G) and (M) - (R) are sustained. AFI's objections 1 - 4 are overruled. The court can evaluate the Grandinetti declaration in light of his prior statements concerning the execution of the documents at issue without the danger of becoming confused.

The clerk is directed to give notice.